

# UNITED STATES DISTRICT COURT

SOUTHERN

DISTRICT OF

TEXAS

UNITED STATES OF AMERICA  
V.

## CRIMINAL COMPLAINT

IYAD ABU EL HAWA

Case Number:

10101 Harwin, Suite 370, Houston, Texas  
(Name and Address of Defendant)

I, the undersigned complainant, state that the following is true and correct to the best of my knowledge and belief. On or about Oct. 21, 2005 in Harris County, in the Southern District of Texas defendant(s) did,

(Track Statutory Language of Offense)

knowingly and willfully execute, or attempt to execute, a scheme and artifice: (1) to defraud a health care benefit program; namely the Medicare program; and (2) to obtain by means of material false and fraudulent pretenses, representations and promises, money and property owned by or under the custody and control of, a health care benefit program, namely Medicare, in connection with the delivery of or payment for health care benefits, items or services,

in violation of Title 18 United States Code, Section(s) 1347

I further state that I am a(n) Special Agent with FBI and that this complaint is based on the facts related in the affidavit attached hereto and made a part of this complaint.

Kevin D. Lammens  
Signature of Complainant

KEVIN D. LAMMENS  
Printed Name of Complainant

Sworn to before me and signed in my presence,

10-27-05  
Date

at

Houston, Texas  
City and State

Nancy Johnson, U.S. Magistrate Judge  
Name and Title of Judicial Officer

[Signature]  
Signature of Judicial Officer

## **AFFIDAVIT**

### **A. IDENTITY AND EXPERIENCE OF AFFIANT**

I, Kevin Lammons, your affiant, being duly sworn, do depose and state as follows:

1. Affiant has been a Special Agent with the Federal Bureau of Investigation (FBI) for approximately 15 years, investigating violations of federal criminal law with an emphasis on health care fraud for the past year. Affiant is assigned to the Houston office of the FBI.

### **B. PURPOSE OF AFFIDAVIT**

2. This affidavit is made in support of a complaint and arrest warrant for Iyad Abu El Hawa.
3. This affidavit does not contain all information gathered during this investigation, but it is being submitted for the limited purpose to establish probable cause to believe that the individuals below have engaged in and continue to engage in criminal activity.
4. Based on my investigation and the information contained in this affidavit, it is affiant's belief that Iyad Abu El Hawa, and others known and unknown, have engaged in violations of federal law, which involve Title 18, United States Code, Section 1347. To wit:  
  
To violate the health care fraud statute, that is, to knowingly and willfully execute or attempt to execute, a scheme and artifice: (1) to defraud a health care benefit program; namely the Medicare program; and (2) to obtain by means of material false and fraudulent pretenses, representations and promises, money and property owned by or under the custody and control of, a health care benefit program, namely Medicare, in connection with the delivery of or payment for health care benefits, items or services, in violation of Title 18, United States Code Section 1347.

### **C. BASIS FOR FACTS CONTAINED IN THIS AFFIDAVIT**

5. The information contained in this affidavit is a compilation of information developed through investigations by the FBI, the Texas Department of State Health Services (DSHS), and the Texas Attorney General's Office – Medicaid Fraud Control Unit (MFCU), and affiant's direct personal knowledge from reviewing evidence and interviewing witnesses, believed to be credible and to possess accurate information.

### **D. FEDERAL HEALTH CARE FRAUD**

6. Based on affiant's training and experience, as well as work on other health care fraud cases, affiant knows the following regarding health care fraud:
7. Medicare is a federally funded health insurance program designed to provide medical care to individuals over age 65 and individuals with disabilities. The Medicare payment system comprises two divisions: Medicare Part A (hospital insurance) and Medicare Part B (medical insurance). Medicare Part A helps pay for inpatient hospital stays, skilled nursing facility services, home health services and hospice care. Medicare Part B helps pay for physician services, outpatient hospital services, medical equipment and supplies, ambulance transportation services and other health care services and supplies.

### **E. STATEMENT OF PROBABLE CAUSE**

8. Affiant's belief is based on the following facts and information:

9. On Friday, October 21, 2005, the FBI was contacted by a credible witness, a nurse who worked on a contract basis for Comfort & Caring, 10101 Harwin, Suite 370, Houston, Texas 77036. The nurse was hired by Mr. Iyad Abu El Hawa, owner of Comfort & Caring, to help give flu vaccinations at an Exxon plant in Baytown over a two-day period, Oct. 19-20, 2005. Mr. Hawa owns and operates at least two other home health centers, America Home Health and Universal Health Care Services, also located at the same Harwin building as Comfort & Caring. At this time, the United States is not seeking search warrants for these two other businesses. A visual inspection of the America Home Health suite revealed an empty office space. Universe is an open business.
10. The nurse asked another employee of Comfort & Caring, prior to the inoculations at Exxon, to give him the lot numbers of the flu vaccine that was being used at the Exxon plant. The nurse asked the employee for the lot numbers because the employee told the nurse that he, the employee, had filled the syringes in anticipation of the Exxon event. The nurse told the FBI that the employee was completely unfamiliar with the concept of a lot number to identify vaccines.
11. Lot numbers are used by manufacturers of vaccine to track and identify the purchasers and ultimate users of a vaccine, in the event of a problem or issue.
12. Additionally, the nurse stated that the employee related that he, the employee, was tired from staying up all night filling syringes in anticipation of the Exxon event, and had pricked his fingers a few times while filling the syringes.
13. Additionally, the employee told the nurse, while at Exxon, not to allow another doctor who was present at the Exxon event to see or take any of the flu vaccine syringes.

14. The nurse was additionally told by Mr. Hawa that he had made arrangements and planned to travel to Louisiana that night, Friday, Oct. 21, 2005, to conduct more flu vaccinations at a church health fair the next day. Mr. Hawa would later state that this location in Louisiana was St. Henry's Catholic Church, 1021 8<sup>th</sup> Avenue, Lake Charles, Louisiana. Mr. Hawa produced to Affiant a handwritten sheet with the location of the church and the times of Mass.

15. According to information gathered by law enforcement officials in Louisiana, Mr. Hawa and his agents were to give out free flu shots to the elderly and then bill Medicare for the vaccinations. Affiant has learned that the vaccinations were not given by Mr. Hawa or his affiliates at this Lake Charles church.

16. The nurse kept two of the syringes from the Exxon vaccination and turned them over to the FBI. The nurse estimated that approximately 1,600 vaccinations were given out at the Exxon health fair.

17. The Texas Department of State Health Services, which licenses and regulates home health care businesses, was contacted and told about the information provided by the nurse witness. Based on that information, Health department investigators inspected Comfort & Caring's offices at 10101 Harwin, Suite 370, and traveled to a doctor's office in Baytown. According to the nurse witness, a female employee of the doctor helped arrange the inoculations at Exxon because a family member worked at the Exxon plant.

18. State investigators, along with FBI agents, interviewed the female employee and that doctor, on Friday afternoon, Oct. 21, 2005.

19. Contemporaneously with the Baytown interviews on Friday, Oct. 21, 2005, Affiant and a State investigator arrived at Comfort & Caring on that same Friday afternoon to see Mr. Hawa throwing a bag of syringes out in a dumpster, across the street from Comfort & Caring.

20. When questioned by State investigators and Affiant about his actions, Mr. Hawa stated that the female employee called him moments earlier and told him that investigators had arrived at the doctor's office in Baytown, and were asking about the Exxon inoculations. Mr. Hawa stated that after speaking with the doctor's employee on the phone, he squirted some of the syringe liquid on his finger, and it tasted like salt. Because of this, he decided that the vaccines were fake and the syringes needed to be thrown away immediately.

21. The State investigators retrieved the approximately 32 syringes containing a liquid from the dumpster and took custody of them. The State has produced the approximate 32 syringes to the FBI. Ten of the syringes, along with one of the two produced by the nurse witness, have been sent to a federal lab in Ohio to test for the presence of vaccine and any other material. The syringes also will be tested. Test results came from the lab today, Oct. 27, 2005. According to the lab, the solution is not saline and no vaccine was present. Further testing is being conducted to determine what the fluid is.

22. The female employee was questioned later that Friday on whether or not she called Mr. Hawa. The female employee denied making any call to Mr. Hawa. Affiant witnessed Mr. Hawa calling the female employee Friday evening at the doctor's office, and told this person to fax any inoculation records in the employee's possession. Some records were faxed that night to Comfort & Caring from the doctor's office. Additionally, the female employee stated to investigators that she helped fill syringes with flu vaccine from vials for the Exxon event.

23. Based on Affiant's investigation, Affiant does not believe at this time that any syringes were re-used. The nurse witness has stated that the syringes used at the Exxon event were disposed of in a container which is designed to keep used syringes from coming in contact with any person after being used. The nurse stated that the container was taken from the Exxon event by another employee and Mr. Hawa.

24. After being interviewed by the State inspectors on Friday afternoon, Oct. 21, 2005, Mr. Hawa consented to be further interviewed by the FBI, including this Affiant. Mr. Hawa told Affiant that he was a plastic surgeon in Israel. He later retracted this statement as untrue.

25. Additionally over the course of the last several days, Mr. Hawa has given several other voluntary statements to the Affiant. Included in those various statements was this information: Mr. Hawa says he and two other men met on or about September 25, 2005 and discussed a plan whereby Mr. Hawa would purchase 5,000 doses of saline solution already in syringes from the two men for a price of \$50,000, to be paid later. (This works out to be approximately \$10 per filled syringe). This account conflicts with statements by the Comfort & Caring employee who related to the nurse how he stayed up late filling the syringes at his home.

26. Mr. Hawa told Affiant that he and his affiliates would inject people with saline solution, but would charge for a flu shot. Additionally, Mr. Hawa said one of the men provided him with a fraudulent invoice for flu vaccine. On October 4, 2005, the trio met in the parking lot of Comfort & Caring and Mr. Hawa took possession of ice chests filled with several hundred syringes and saline solution. Based on Affiant's investigation, Affiant does not believe this estimate of received syringes is accurate.

27. Mr. Hawa stated that he and his affiliates, known and unknown, arranged and conducted various inoculation events, including the Exxon event, where the shots were falsely represented to be flu vaccines. Additionally, Mr. Hawa stated that he planned to bill Exxon approximately \$20 for each inoculation. For any Medicare patients at other events, he planned to bill Medicare. Mr. Hawa stated that he has not billed Exxon yet.

28. Mr. Hawa produced records showing that he and his staff also have inoculated at least 14 senior citizens in LaPorte, Texas with this saline solution on Friday, Oct. 21, 2005. He produced names, dates of birth and Medicare and Medicaid numbers for those 14 senior citizens, as well as some photo copies of their Medicare and Medicaid cards. Mr. Hawa stated that he planned to bill Medicare for the injections through a physician. I, affiant, therefore believe this constitutes an attempt to violate 18 U.S.C. 1347.


29. Mr. Hawa also stated that the female employee has at least three saline-filled syringes in the employee's possession.

30. The nurse witness also provided this information:


31. Mr. Hawa called the nurse during the Friday interviews with the State investigators and FBI. Mr. Hawa told the nurse to call the male employee who had filled syringes and tell him to throw away any saline solution and syringes that he may still have at his home. Later, the nurse stated that the nurse did not make that call to the male employee. Additionally the nurse turned the nurse's cell phone over to the FBI.



32. In summary, this affiant states that based upon the information set forth above, there is probable cause to believe that Mr. Hawa has violated and attempted to violate federal laws governing health care fraud.

  
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KEVIN LAMMONS, Special Agent  
Federal Bureau of Investigation

Sworn and subscribed before me, and I find probable cause, on this 27<sup>th</sup> day of October, 2005.

  
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UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

V.

IYAD ABU EL HAWA

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MAGISTRATE NO.

**MOTION TO SEAL**

COMES NOW the United States of America, by and through Chuck Rosenberg, United States Attorney, and Suzanne Bradley, Special Assistant United States Attorney, for the Southern District of Texas, and moves this Honorable Court to seal the Criminal Complaint, Affidavit and Arrest Warrant, and this Motion and Order to Seal and in support thereof would state the following:

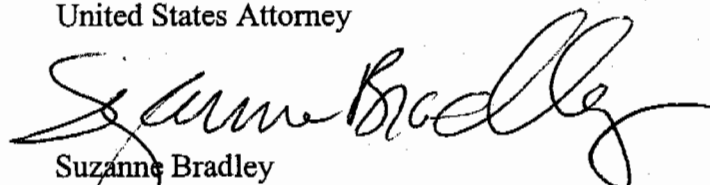
1. This affidavit contains information obtained as the result of a continuing investigation into violations of federal laws involving Medicare fraud. The information contained in the affidavit would expose the ongoing criminal investigation and reveal information of a sensitive nature.

WHEREFORE, the Government requests that this Motion, the Order, and the Criminal Complaint, Affidavit and Arrest Warrant for the above named defendant, be filed under seal, except for a copy to the Affiant and investigating agency for their investigative needs.

The government further requests that the criminal complaint, affidavit and arrest warrant be automatically unsealed upon the arrest of the defendant.

Respectfully submitted,

CHUCK ROSENBERG  
United States Attorney

A handwritten signature in black ink, appearing to read "Suzanne Bradley", written in a cursive style.

Suzanne Bradley  
Special Assistant United States Attorney  
713/567-9555

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

V.

IYAD ABU EL HAWA

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MAGISTRATE NO.

**ORDER TO SEAL**

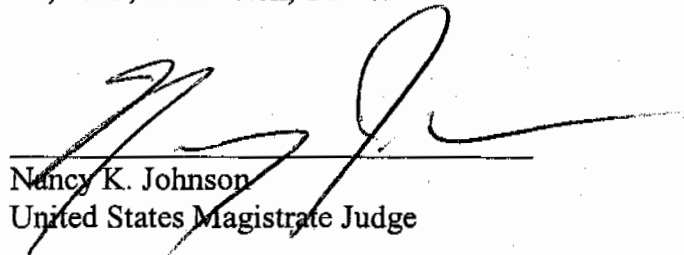
The Court, having considered the Government's Motion to Seal the Criminal Complaint, Affidavit, and Arrest Warrant, and the government's Motion to Seal, and this Order, hereby

ORDERS that the Criminal Complaint, Affidavit, and Arrest Warrant, the Motion to Seal and this Order be sealed by the U.S. District Clerk from any publication or access by the public until further order by this Court.

IT IS FURTHER ORDERED that a copy be provided to the Affiant and investigating agency for their investigative needs.

IT IS FURTHER ORDERED that the Criminal Complaint, Affidavit, and Arrest Warrant and automatically unsealed upon the arrest of the defendant.

Signed on this the 27<sup>th</sup> day October, 2005, at Houston, Texas.

  
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Nancy K. Johnson  
United States Magistrate Judge